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# YOUR RIGHTS UNDER THE CODE

**unfair practice**

**unlawful strike and lock-out**

**access to financial statements**

Canada  
Labour  
Relations  
Board



# YOUR RIGHTS UNDER THE CODE

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Canada  
Labour  
Relations  
Board





## WARNING

This publication has been prepared by the staff of the Canada Labour Relations Board as a guide and does not necessarily reflect the policy of the Board.

The full text of Part V of the Canada Labour Code, the Canada Labour Relations Board Regulations and further information may be obtained by contacting any of the offices of the Board.

Part V of the Canada Labour Code does NOT apply to the majority of employers and employees and is restricted to activities which come under the description of "federal work, undertaking or business".

Section 2 of the Code defines that term as follows:

2. In this Act  
"federal work, undertaking or business"  
means any work, undertaking or business  
that is within the legislative authority of  
the Parliament of Canada, including  
without restricting the generality of the  
foregoing:
  - (a) a work, undertaking or business  
operated or carried on for or in  
connection with navigation and ship-  
ping, whether inland or maritime,  
including the operation of ships and  
transportation by ship anywhere in  
Canada;
  - (b) a railway, canal, telegraph or  
other work or undertaking connecting  
any province with any other or others  
of the provinces, or extending beyond  
the limits of a province;
  - (c) a line of steam or other ships  
connecting a province with any other

or others of the provinces, or extending beyond the limits of a province;  
(d) a ferry between any province and any other province or between any province and any other country other than Canada;  
(e) aerodromes, aircraft or line of air transportation;  
(f) a radio broadcasting station;  
(g) a bank;  
(h) a work or undertaking that, although wholly situated within a province, is before or after its execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces; and  
(i) a work, undertaking or business outside the exclusive legislative authority of provincial legislatures;


Section 108 and Section 109 deal with the application of the legislation:

108. This Part applies in respect of employees who are employed upon or in connection with the operation of any federal work, undertaking or business and in respect of the employers of all such employees in their relations with such employees and in respect of trade unions and employers' organizations composed of such employees or employers.

109. (1) This part applies in respect of any corporation established to perform any function or duty on behalf of the Government of Canada and in respect of employees of any such corporation, except any such corporation, and the employees thereof, that the Governor in Council excludes from the operation of this Part.
- (2) The Governor in Council may exclude from the operation of this Part only those corporations in respect of which a Minister of the Crown, the Treasury Board or the Governor in Council is authorized to establish or to approve some or all of the terms and conditions of employment of persons employed therein.
- (3) Where the Governor in Council excludes any corporation from the operation of this Part, he shall, by order, add the name of that corporation to Part I or Part II of Schedule I to the Public Service Staff Relations Act.
- (4) Except as provided by this section, this Part does not apply in respect of employment by Her Majesty in right of Canada.

If there is some doubt as to whether the Canada Labour Relations Board or a Provincial Board has jurisdiction it is advisable to institute proceedings before both Boards as soon as possible particularly with regards to complaints of unfair labour practice because the time limits for instituting proceedings are shorter in most provincial jurisdictions.





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## INTRODUCTION

In this booklet we are attempting to describe in clear and concise language the rights and obligations of all persons and parties covered by Part V of the Canada Labour Code and to outline the procedures to be followed by persons who have suffered as a result of noncompliance or violation of the Code by some other person or party.

In the description of these rights and obligations we are providing cross reference to applicable provisions of the Code and the Canada Labour Relations Board Regulations which are also reproduced and indexed.

This booklet does not deal with the role of the Canada Labour Relations Board with regard to the acquisition or termination of bargaining rights, access to employers' property, imposition of a first collective agreement, safety, technological change or the role of the Minister of Labour or the Federal Mediation and Conciliation Services.

It is confined to allegations of violations of Part V of the Canada Labour Code in respect of which the Canada Labour Relations Board can receive and deal with applications or complaints.

These areas include unfair labour practices, cases of unlawful strikes or lock-outs, and the right of a member of a union, or an employers' organization to financial statements.

## RIGHTS

The Canadian approach to industrial relations is based on guaranteeing certain rights to employees and protecting those rights from employer interference. This necessarily involves placing restrictions on certain employer activities. However, employers are also guaranteed certain rights with the consequence that certain activities by employees and unions are prohibited.

Basically employees have the right to form unions. Unions enjoying the support of the majority of employees in an appropriate bargaining unit have the right to negotiate a collective agreement with the employer.

Although, as indicated in the introduction we do not propose to deal with procedures relating to bargaining rights, those procedures are dealt with by the Canada Labour Relations Board.

When unions have bargaining rights the Minister of Labour and particularly the Federal Mediation and Conciliation Services play a role in assisting employers and unions to reach collective agreements without resort to strike or lock-out. If, however, these efforts to assist the parties to reach a settlement are not successful, the parties acquire the legal right to engage in strike or lock-out.

Having reached and signed a collective agreement the Canada Labour Code requires the parties to refrain from strike or lock-out during the life of a collective agreement. Any disputes arising during the life of a collective agreement or subsequent negotiations or conciliation procedures must be settled by binding arbitration and without strike or lock-out.

Parliament has entrusted to the Canada Labour Relations Board in addition to other responsibilities



the task of dealing with complaints alleging that rights have been violated, and where it is not possible to settle a matter by agreement to order a remedy appropriate to the circumstances where it is found that there has been a failure to comply with the law.

The basic rights guaranteed by the Code are expressed in Section 110.

- 110.(1) Every employee is free to join the trade union of his choice and to participate in its lawful activities.
- (2) Every employer is free to join the employers' organization of his choice and to participate in its lawful activities.

To protect these basic rights there are certain requirements and prohibitions that apply to employees, unions and employers.

## **REQUIREMENTS**

1. Unions are required to represent all employees in their bargaining units fairly and without discrimination (Section 136.1 page 23).
2. Employers and bargaining agent unions are required to bargain in good faith and make every reasonable effort to enter into collective agreements (Section 148(a) - page 13).
3. Unions operating hiring halls or other forms of referral of employees to jobs must have rules which must be posted in the hiring halls and these rules must be applied fairly and without discrimination (Section 161.1 - page 23).
4. Employers and unions are required to refrain from strikes and lock-outs at certain times and to settle all differences regarding their respective rights under col-

lective agreements without stoppage of work by binding arbitration or other procedures (Section 180 - page 38).

5. Unions and employers' organizations are required to provide their members with a copy of a financial statement on request (Section 199.1 - page 49).

## **PROHIBITIONS**

### **EMPLOYERS**

1. Employers may not change the rates of pay or any other terms or conditions of employment or employee's rights or privileges once an application for certification has been made, except under certain conditions (Section 124(4) - page 17).

2. Similar changes are prohibited where notice to bargain has been duly given, except with the consent of the union, and the prohibition continues until the parties are free to engage in a lawful strike or lock-out (Section 148(b) - page 17).

3. Employers and their agents are prohibited from participating or interfering with the formation or administration of a trade union or the representation of employees by a trade union and from giving financial or other support to a union (Section 184(1) and (2) - page 18).

4. Employers and their agents are prohibited from firing, refusing to hire, discriminating or taking other forms of action against employees for the exercise of protected employee rights specifically implied by the Code, including:

- (a) The right to become a member, an officer or a representative of a union and to urge others to do so and to participate in the organization and administration of the union (Section 184(3) (a)(i) - page 20).
- (b) The right to continue to work on a job when expelled from a union unless expelled for failure to pay the regular union member payments (Section 184(3)(a)(ii) - page 20).
- (c) The right to file applications and complaints and to participate, make disclosures and give evidence in proceedings under Part V of the Code (Section 184(3)(a)(iii)(iv) and (v) -page 20).
- (d) The right to participate in a lawful strike and exercise other rights under Part V of the Code (Section 184(3)(a)(vi) - page 21).
- (e) The right to refuse to do some or all of the work of another employee who is participating in a lawful strike (Section 184(3)(c) - page 21).
- (f) The right to refuse to do anything that is prohibited by Part V of the Code (Section 184(3)(f) - page 22).

5. Employers and their agents are also prohibited from threatening to take action against employees in order to prevent them from exercising their rights (Sections 184(3)(a) - page 20, 184(3)(e) - page 21, and 186-page 13).

6. Employers and their agents are prohibited from attempting to negotiate with a union other than the union which is the legal bargaining agent. (Section 184(3)(g)-page 14).

## UNIONS

7. If a union knows or should know that another union is the legal bargaining agent of employees, it is prohibited from bargaining, seeking to compel the employer to bargain or entering into a collective agreement covering such employees (Section 185(a) and (b) - page 14).

8. Unions and their representatives are prohibited from interfering with the formation or administration of employers' organizations (Section 185(c) - page 24).

9. Unless the employer gives permission\*, unions are prohibited from campaigning for or against a union on the employer's premises during the working hours of the employees concerned (Section 185(d) - page 24).

10. Unions are prohibited from forcing an employer to fire an employee because he has been expelled from the union unless the employee was expelled he failed to pay the regular union member payments (Section 185(e) - page 25).

11. Unions are prohibited from expelling, suspending or denying union membership through discriminatory application of their rules (Section 185(f) - page 25).

12. Unions are prohibited from imposing discipline or penalties through the discriminatory application of the union's standards for discipline (Section 185(g) - page 25).

\*Employers should note No. 3 above and that Section 184(2) allows for activities that are not necessarily employer interference when the union involved is the bargaining agent.



13. Unions are prohibited from imposing penalties or taking disciplinary action against a member because he refused to do something that would be a violation of Part V of the Code (Section 185(h)-page 25).

14. Unions are prohibited from discriminating, taking other forms of action or threatening to do so because a person has exercised his right to file an application or a complaint, to make disclosures required by or to testify or participate in proceedings under Part V of the Code (Section 185(i)-page 26).

## **GENERAL**

All persons are prohibited from the use of intimidation or coercion to compel somebody to become a member or to refrain from becoming or to quit being a member of a union (Section 186 - page 13).

## **WHAT YOU MAY COMPLAIN ABOUT**

Apart from charges of unlawful strike or lock-out (see page 38) or a failure to provide a financial statement (see page 49) Section 187.(1) lists the sections of the Code on which complaints can be based.

Section 187.(1) reads as follows:

- 187.(1)      Subject to subsections (2) to (5), any person or organization may make a complaint in writing to the Board that
- (a)      an employer, a person acting on behalf of an employer, a trade union, a person acting on behalf of a trade union or an employee has failed to comply with subsection 124(4) or section 136.1, 148, 161.1, 184 or 185;  
                  or

- (b) any person has failed to comply with section 186.

The complaints that may be filed pursuant to Section 187 can be divided into complaints against unions and complaints against employers, except for failure to bargain in good faith, which can apply to a union or an employer and the general prohibition against intimidation.

### INTIMIDATION

Section 186 provides as follows:

- 186. No person shall seek by intimidation or coercion to compel a person to become or refrain from becoming or to cease to be a member of a trade union. 1972, c. 18, s. 1.

### BARGAINING IN BAD FAITH

Section 148(a) provides as follows:

- 148. Where notice to bargain collectively has been given under this Part,
  - (a) the bargaining agent and the employer, without delay, but in any case within twenty days after the notice was given unless the parties otherwise agree, shall
    - (i) meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith, and

- (ii) make every reasonable effort to enter into a collective agreement; and

Only the bargaining agent is permitted to bargain on behalf of employees. Section 185(a) and (b) prohibits another union from attempting to do so.

185. No trade union and no person acting on behalf of a trade union shall

- (a) seek to compel an employer to bargain collectively with the trade union if the trade union is not the bargaining agent for a bargaining unit that includes employees of the employer;
- (b) bargain collectively for the purpose of entering into a collective agreement or enter into a collective agreement with an employer in respect of a bargaining unit, if that trade union or person knows or, in the opinion of the Board, ought to know that another trade union is the bargaining agent for that bargaining unit;

The employer is also restricted to bargaining with the union that is the bargaining agent by the provisions of Section 184(3)(g) which provides that no employer or person acting on behalf of an employer shall:

- (g) bargain collectively for the purpose of entering into a collective agreement or enter into a collective agreement with a trade union in respect of a bargaining unit, if another trade union is the bargaining agent for that bargaining unit.

## CONSENT OF THE MINISTER OF LABOUR NEEDED

Because of the responsibility of the Minister of Labour for collective bargaining and particularly the role of the Federal Mediation and Conciliation Services, the consent of the Minister of Labour is necessary in order to file a bargaining related complaint with the Board. Section 187.(5) of the Code states:

- 187.(5) Except with the consent in writing of the Minister, no complaint shall be made to the Board under subsection (1) in respect of an alleged failure to comply with section 148 or paragraph 184(3)(g) or 185(a) or (b).

Section 7 of the Canada Industrial Relations Regulations explains the format to be used in seeking the consent of the Minister.

7. A request to the Minister for his consent to the making of a complaint to the Board in respect of an alleged failure to comply with section 148 or paragraph 184(3)(g) or 185(a) or (b) of the Act shall state
- (a) the name and address of the party making the request,
  - (b) the name and address of the person or organization against whom it is desired to make a complaint,
  - (c) the nature of the alleged failure to comply,
  - (d) the section of the Act in respect of which it is alleged there has been a failure to comply,



- (e) the date or dates upon which and the place where the alleged failure to comply occurred or, in the case of an alleged continuing failure to comply, the date upon which the alleged continuing failure to comply commenced and the period of time during which it continued, and
- (f) the facts upon which the party making the request relies as constituting the alleged failure to comply,

and be signed by or on behalf of the party making the request and verified by statutory declaration.

The request for consent together with the statutory declaration should be forwarded to the Minister of Labour in Ottawa. The postal code is K1A 0J2.

## **COMPLAINTS AGAINST AN EMPLOYER**

### **CHANGING CONDITIONS**

When an employer has been notified that a union has applied for certification, the employer is prohibited from making changes that could influence the choice being made by the employees involved.

Section 124(4) provides as follows:

- (4) Where an application by a trade union for certification as a bargaining agent for a unit is made in accordance with this section, no employer of employees in the unit shall, after notification that the application has been made, alter the rates of pay or any other term or condition of employment or any right or privilege of such employees until

- (a) the application has been withdrawn by the trade union or dismissed by the Board, or
- (b) thirty days have elapsed after the day on which the Board certifies the trade union as bargaining agent for the unit,

except pursuant to a collective agreement or with the consent of the Board.

Where notice to bargain for a first or subsequent collective agreement has been given, Section 148(b) prohibits the employer from making changes without the consent of the union that is the bargaining agent. Section 148(b) reads as follows:

- (b) the employer shall not alter the rates of pay or any other term condition of employment or any right or privilege of the employees in the bargaining unit, or any right or privilege of the bargaining agent, until the requirements of paragraphs 180(1)(a) to (d) have been met, unless the bargaining agent consents to the alteration of such a term or condition, or such a right or privilege.

Complaints alleging breach of the provisions of Section 148(b) require Ministerial consent (see this page).

It should be noted that even after the expiry date of a collective agreement has passed, conditions cannot be changed and strike or lock-out cannot lawfully commence until such time as the requirements of Section 180(1) have been met (see page 38) and Section 160 requires that the grievance and arbitration procedures remain in force during this period of time.

## INTERFERENCE WITH A UNION

Employer involvement in union affairs is prohibited by Section 184(1) while subsection (2) provides for exceptions in relation to a union that is the bargaining agent. The Code provides as follows:

- 184.(1) No employer and no person acting on behalf of an employer shall
- (a) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union; or
  - (b) contribute financial or other support to a trade union.
- (2) An employer is deemed not to contravene subsection (1) by reason only that he
- (a) in respect of a trade union that is the bargaining agent for a bargaining unit comprised of or including employees of the employer,
    - (i) permits an employee or representative of the trade union to confer with him during working hours or to attend to the business of the trade union during working hours without any deduction from wage or any deduction of time worked for the employer,
    - (ii) provides free transportation to representatives of the trade union for purposes of collective bargaining, the administration of a collective agreement and related matters, or

- (iii) permits the trade union to use his premises for the purposes of the trade union; or
- (b) contributes financial support to any pension, health or other welfare trust fund the sole purpose of which is to provide pension, health or other welfare rights or benefits to employees.

Apart from a complaint against an employer for interfering with a union or supporting a union, the union could be denied certification or have its collective agreement disregarded if the Board found employer domination or influence. Section 134(1) provides as follows:

- 134.(1) Notwithstanding anything in this Part, where the Board is satisfied that a trade union is so dominated or influenced by an employer that the fitness of the trade union to represent employees of the employer for the purpose of collective bargaining is impaired,
- (a) the Board shall not certify the trade union as the bargaining agent for any unit comprised of employees of the employer; and
  - (b) any collective agreement between the trade union and the employer that applies to any such employees shall be deemed not to be a collective agreement for the purposes of this Part.

## INTERFERENCE WITH THE RIGHTS OF WORKERS

Offences against the rights of individuals are described in Section 184(3)(a) to (f):



- (3) No employer and no person acting on behalf of an employer shall
- (a) refuse to employ or to continue to employ or suspend, transfer, lay off or otherwise discriminate against any person in regard to employment, pay or any other term or condition of employment or intimidate, threaten or otherwise discipline any person, because the person
    - (i) is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of a trade union or participates in the promotion, formation or administration of a trade union,
    - (ii) has been expelled or suspended from membership in a trade union for a reason other than failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining membership in the trade union,
    - (iii) has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Part,
    - (iv) has made or is about to make a disclosure that he may be required to make in a proceeding under this Part,
    - (v) has made an application or filed a complaint under this Part, or

- (vi) has participated in a strike that is not prohibited by this Part or exercised any right under this Part;
- (b) impose any condition in a contract of employment that restrains, or has the effect of restraining an employee from exercising any right conferred upon him by this Part;
- (c) suspend, discharge or impose any financial or other penalty on an employee, or take any other disciplinary action against an employee, by reason of his refusal to perform all or some of the duties and responsibilities of another employee who is participating in a strike that is not prohibited by this Part;
- (d) deny to any employee any pension rights or benefits to which the employee would be entitled but for
  - (i) the cessation of work by the employee as the result of a lock out or strike that is not prohibited by this Part, or
  - (ii) the dismissal of the employee contrary to this Part;
- (e) seek, by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or other penalty or by any other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of a trade union or to refrain from

- (i) testifying or otherwise participating in a proceeding under this Part,
  - (ii) making a disclosure that he may be required to make in a proceeding under this Part, or
  - (iii) making an application or filing a complaint under this Part;
- (f) suspend, discharge or impose any financial or other penalty on a person employed by him, or take any other disciplinary action against such a person, by reason of that person having refused to perform an act prohibited by this Part; or

### **DID YOU FILE A GRIEVANCE?**

Some violations of the Code by an employer could also be dealt with by way of grievance and arbitration procedure.

Section 188(2) of the Code provides:

- (2) The Board may refuse to hear and determine any complaint made pursuant to section 187 in respect of a matter that, in the opinion of the Board, could be referred by the complainant pursuant to a collective agreement to an arbitrator or arbitration board.

If a complainant feels that his problem might be resolved by a grievance that could be referred to arbitration it is advisable to file a grievance within the time limits set out in the collective agreement in order to protect that right to seek a remedy.

## COMPLAINTS AGAINST A UNION

### DUTY OF FAIR REPRESENTATION

A union that is a bargaining agent has exclusive authority to represent the employees in collective bargaining with the employer. Section 136.1 requires that such a union must represent all the employees fairly.

- 136.1        Where a trade union is the bargaining agent for a bargaining unit, the trade union and every representative of the trade union shall represent, fairly and without discrimination, all employees in the bargaining unit.

### HIRING HALLS

Section 161.1 requires unions which refer employees to jobs to have rules which must be kept posted and to apply these rules fairly and without discrimination. The definition of "referral" could actually cover more than a hiring hall situation.

- 161.1(1)    Where, pursuant to a collective agreement, a trade union is engaged in the referral of persons to employment, it shall apply, fairly and without discrimination, rules established by the trade union for the purpose of making the referral.
- (2)        Rules applied by a trade union pursuant to subsection (1) shall be kept posted in a conspicuous place in every area of premises occupied by the trade union in which persons seeking referral normally gather.



- (3) Where a trade union to which subsection (1) applies has not established, before the coming into force of this section, rules for the purpose of making the referral referred to in that subsection, the trade union shall establish rules for that purpose forthwith after the coming into force of this section.
- (4) In this section, "referral" includes assignment, designation, dispatching, scheduling and selection.

### INTERFERENCE WITH EMPLOYERS

Unions are prohibited from interference with the rights of employers to form employers' organizations; from campaigning on company time; and interfering with the duty of an employer not to fire an employee because he was suspended or expelled from membership in the union for any reason other than failure to pay the regular union payments.

Section 185(c), (d) and (e) provide as follows:

185. No trade union and no person acting on behalf of a trade union shall
- (c) participate in or interfere with the formation or administration of an employers' organization;
  - (d) except with the consent of the employer of an employee, attempt, at an employee's place of employment during the working hours of the employee, to persuade the employee to become, to refrain from becoming or to cease to be a member of a trade union;

- (e) require an employer to terminate the employment of an employee because he has been expelled or suspended from membership in the trade union for a reason other than a failure to pay the periodic dues, assessments and initiation fees uniformly required to be paid by all members of the trade union as a condition of acquiring or retaining memberships in the trade union;

### DISCIPLINE AND DISCRIMINATION AGAINST EMPLOYEES

The rights of workers under the Code and the membership rules of a union are protected by the provisions of Section 185(f),(g),(h) and (i) which provide that unions and their representatives shall not

- (f) expel or suspend an employee from membership in the trade union or deny membership in the trade union to an employee by applying to him in a discriminatory manner the membership rules of the trade union;
- (g) take disciplinary action against or impose any form of penalty on an employee by applying to him in a discriminatory manner the standards of discipline of the trade union;
- (h) expel or suspend an employee from membership in the trade union or take disciplinary action against or impose any form of penalty on an employee by reason of his having refused to perform an act that is contrary to this Part; or

- (i) discriminate against a person in regard to employment, a term or condition of employment or membership in a trade union, or intimidate or coerce a person or impose a pecuniary or other penalty on a person, because he
- (i) has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Part,
- (ii) has made or is about to make a disclosure that he may be required to make in a proceeding under this Part, or
- (iii) has made an application or filed a complaint under this Part.

### DID YOU APPEAL TO THE UNION?

If a complaint relates to discriminatory application of membership rules or the standards of discipline of the union, the complainant should use the appeal procedure in the union's constitution, by-laws or rules. Failure to do so could result in the dismissal of the complaint unless there is a reason which the Board feels meets the exceptions described in Section 187(3) or (4).

- (3) Subject to subsection (4), no complaint shall be made to the Board under subsection (1) on the ground that a trade union or any person acting on behalf of a trade union has failed to comply with paragraph 185(f) or (g) unless

- (a) the complainant has presented a grievance or appeal in accordance with any procedure
    - (i) that has been established by the trade union, and
    - (ii) to which the complainant has been given ready access;
  - (b) the trade union
    - (i) has dealt with the grievance or appeal of the complainant in a manner unsatisfactory to him, or
    - (ii) has not, within six months from the date on which the complainant first presented his grievance or appeal pursuant to paragraph (a), dealt with his grievance or appeal; and
  - (c) the complaint is made to the Board not later than ninety days from the first day on which the complainant could, in accordance with paragraphs (a) and (b), make the complaint.
- (4) The Board may, on application to it by a complainant, hear a complaint in respect of an alleged failure by a trade union to comply with paragraph 185(f) or (g) that has not been presented as a grievance or appeal to the trade union, if the Board is satisfied that
- (a) the action or circumstance giving rise to the complaint is such that the complaint should be dealt with without delay; or



- (b) the trade union has not given the complainant ready access to a grievance or appeal procedure.

### **WHO MAY FILE A COMPLAINT?**

Any person may file a complaint (see Section 187(1) - page 12) but if it is on behalf of an organization or another person, the signing must comply with Section 9 and 10 of the Regulations which cover complaints and replies to complaints.

- 9.(1) An application, reply or intervention filed with the Board shall be signed as follows:
  - (a) where it is filed on behalf of a trade union, a council or trade unions or an employers' organization, it shall be signed by the president or secretary thereof, by two other officers thereof or by a person authorized in writing to sign on behalf of the trade union, council of trade unions or employers' organization;
  - (b) where it is filed on behalf of an employer, it shall be signed by the employer himself, by the general manager or principal executive officer of the employer or by a person authorized in writing to sign on behalf of the employer; and
  - (c) where it is filed on behalf of an employee, it shall be signed by the employee himself or by a person authorized by the employee in writing to sign on his behalf.
- (2) Where a person has been authorized to sign an application, reply or intervention on

behalf of another person, a copy of the authorization shall be filed with the Board.

10. Where a person has been authorized to act on behalf of another person and a copy of the authorization has been filed with the Board, any document required to be given to that other person may be given to the person so authorized to act.

## TIME LIMITS

Complaints should be filed as early as possible. Undue delay could result in the complaint being dismissed because of the provisions of Section 187(2).

- 187(2) Subject to this section, a complaint pursuant to subsection (1) shall be made to the Board not later than ninety days from the date on which the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint.(Emphasis added)

## WRITING UP THE COMPLAINT

There are no special forms to be used to prepare a complaint to be submitted to the Board but it should follow closely the requirements of Section 35 of the Canada Labour Relations Board Regulations.

- 35.(1) A complaint to the Board pursuant to subsection 187(1) of the Code alleging failure to comply with subsection 124(4) or section 136.1, 148, 161.1, 184, 185 or 186 of the Code or a complaint to the Board pursuant to section 199.1 of the Code shall set out

- (a) the full name and address of the complainant;
- (b) the full name and address of the person who is alleged to have failed to comply with a subsection or section of the Code;
- (c) the particular provisions of the subsection or section of the Code that are alleged to have been violated;
- (d) the full name and address of the person alleged to have been prejudicially affected;
- (e) a statement of the facts and circumstances on which the complainant relies in support of the complaint;
- (f) a statement of the order sought from the Board;
- (g) where a failure to comply with paragraph 185(f) or (g) of the Code is alleged, details of the facts on which the complainant relies in claiming that the conditions set out in subsection 187(3) of the Code have been met;
- (h) the date on which the complainant knew of the action or circumstances giving rise to the complaint; and
- (i) where a collective agreement was in effect at the time of the incidents giving rise to the complaint, full particulars of the attempts, if any, made to have the complaint submitted to arbitration under the collective agreement.

- (2) Where, under subsection 187(5) of the Code, the consent in writing of the Minister is required for the filing of a complaint, a copy of the consent of the Minister shall be filed with the complaint.

It is strongly recommended that the exact sequence set out in the Regulations be followed in order to avoid missing an important part of the complaint. If the necessary details are not provided it could result in serious delay or even the dismissal of the complaint.

The person accused of a violation of the law is entitled to enough information to be able to investigate and prepare a defence.

## **WHERE TO SEND A COMPLAINT**

Complaints can be handed in at any of the offices of the Board shown on the last page or may be mailed to the Head Office of the Board or the Vancouver Office.

A complainant should be sure to keep a copy for future reference and it helps if a copy is sent to the Regional Office if you are sending the complaint to the Head Office of the Board in Ottawa.

## **WHAT HAPPENS TO A COMPLAINT?**

When a complaint is in order (see page 29 on "Writing up the Complaint") the usual practice is for the Board to appoint an officer of the Board to contact the parties and find out if he or she can assist the parties in reaching a settlement that is acceptable to all concerned. Discussions or material shown to the officer is confidential unless the party providing the information is agreeable that it should be shown to the

other party. If the officer is unable to assist in a settlement and the case has to go to a hearing he will not provide the Board with any information regarding the details of the settlement efforts.

However, if there is not a settlement the officer may be directed to obtain certain documentation but where this is done all parties will have a copy of such documentation before a hearing commences. This documentation is usually not in dispute and may include such things as proof of dismissal, minutes of a union meeting or a copy of a collective agreement.

Another thing that is done when a complaint is received is that a copy is sent to whoever is accused in the complaint. The person accused, usually called the respondent, is given instructions and a time limit to file a reply.

When the reply is received a copy is sent to the complainant.

## **THE HEARING**

If a complaint is in order and a settlement is not possible the Board normally schedules a hearing and advises the parties of the time and place. The Board travels to all part of Canada and endeavours to hold hearings as near as possible to the location of the parties.

## **THE DECISION**

As soon as possible after a hearing the members of the Board who heard the case (usually three including the Chairman or a Vice-Chairman) consider the evidence and the arguments and arrive at a decision and send a written decision to the parties. (On some occasions it is possible to announce the decision at the end of the hearing).



If the Board cannot agree with the complainant, the complaint is rejected. If the Board upholds the complaint it will provide a remedy.

## THE REMEDY

The remedies that the Board can provide vary from a simple declaration that the Code has been violated to ordering reinstatement with compensation. The powers of the Board to provide a remedy are described in Section 189, Paragraphs (a) to (e) deal with violations of specific sections while the final paragraph provides in general for alternative or additional remedies.

189.           Where, under section 188, the Board determines that a party to a complaint has failed to comply with subsection 124(4) or section 136.1, 148, 161.1, 184, 185 or 186, the Board may, by order, require the party to comply with that subsection or section and may
- (a)           in respect of a failure to comply with section 136.1, require a trade union to take and carry on on behalf of any employee affected by the failure or to assist any such employee to take and carry on such action or proceeding as the Board considers that the union ought to have taken and carried on on the employee's behalf or ought to have assisted the employee to take and carry on;
  - (a.1)       in respect of a failure to comply with subsection 124(4) or paragraph 148(b), by order, require an employer to pay to any employee compensation not

exceeding such sum as, in the opinion of the Board, is equivalent to the remuneration that would, but for that failure, have been paid by the employer to the employee;

- (b) in respect of a failure to comply with paragraph 184(3)(a), (c) or (f), by order, require an employer to
  - (i) employ, continue to employ or permit to return to the duties of his employment any employee or other person whom the employer or any person acting on behalf of the employer has refused to employ or continue to employ or has suspended or discharged for a reason that is prohibited by one of those paragraphs,
  - (ii) pay to any employee or other person affected by that failure compensation not exceeding such sum as, in the opinion of the Board, is equivalent to the remuneration that would, but for that failure, have been paid by the employer to that employee or other person, and
  - (iii) rescind any disciplinary action taken in respect of and pay compensation to any employee affected by that failure, not exceeding such sum as, in the opinion of the Board, is equivalent to any financial or other penalty imposed on the employee by the employer;

- (c) in respect of a failure to comply with paragraph 184(3)(e), by order, require an employer to rescind any disciplinary action in respect of and pay compensation to any employee affected by the failure, not exceeding such sum as, in the opinion of the Board, is equivalent to any pecuniary or other penalty imposed on the employee by the employer;
- (d) in respect of a failure to comply with paragraph 185(f) or (h), by order, require a trade union to reinstate or admit an employee as a member of the trade union; and
- (e) in respect of a failure to comply with paragraph 185(g), (h) or (i), by order, require a trade union to rescind any disciplinary action taken in respect of and pay compensation to any employee affected by the failure, not exceeding such sum as, in the opinion of the Board, is equivalent to any pecuniary or other penalty imposed on the employee by the trade union,

and, for the purpose of ensuring the fulfilment of the objectives of this Part, the Board may, in respect of any failure to comply with any provision to which this section applies and in addition to or in lieu of any other order that the Board is authorized to make under this section, by order, require an employer or a trade union to do or refrain from doing any thing that it is equitable to require the employer or trade union to do or refrain from doing in order to remedy or counteract any consequence of such failure to comply that is adverse to the fulfilment of those objectives.

## COMPLIANCE WITH BOARD DECISIONS

If a person or organization is required to do something or stop doing something in the decision of the Board and fails or refuses to comply, the complainant or his representative may request the Board to file an order in the Federal Court. (See Enforcement of Board Orders, page 47).

## UNLAWFUL STRIKE OR LOCK-OUT

### WHAT IS A LOCK-OUT?

The partial definition of a lock-out contained in Section 107 of the Code reads as follows:

'lockout' includes the closing of a place of employment, a suspension of work by an employer or a refusal by an employer to continue to employ a number of his employees, done to compel his employees, or to aid another employer to compel his employees, to agree to terms or conditions of employment;

### WHAT IS A STRIKE?

In addition to the readily recognizable strike with picketers walking up and down, Section 107 defines a strike to cover other situations:

107. 'strike' includes

- (a) a cessation of work or a refusal to work or to continue to work by employees, in combination or in concert or in accordance with a common understanding, and
- (b) a slowdown of work or other concerted activity on the part of employees in relation to their work that is designed to restrict or limit output;



Such things as "work-to-rule campaigns", "study sessions" and refusal to cross a picket line have been found to constitute a strike.

While an employee may be cheating and liable to discipline if he phones in sick to go fishing or hunting he would not be breaking the law as it stands in the Canada Labour Code. However, if a group of employees decided they would all phone in sick or refuse to do all or part of their work they could be found to be engaging in a strike.

### **WHEN IS STRIKE OR LOCK-OUT UNLAWFUL?**

A strike or lock-out is unlawful at any time if there is no bargaining agent. They are also unlawful at any time during the life of a collective agreement, when negotiations for a collective agreement can be or are in progress and continuing until seven days after the Minister of Labour has indicated the termination of conciliation services. The Code prohibits strikes and lock-outs in the following circumstances:

- 180.(1) No employer shall declare or cause a lock-out and no trade union shall declare or authorize a strike unless
- (a) the employer or trade union has given notice to bargain collectively under this Part;
  - (b) the employer and the trade union
    - (i) have failed to bargain collectively within the period specified in paragraph 148(a), or
    - (ii) have bargained collectively in accordance with section 148 but have failed to enter into or revise a collective agreement;

- (c) the Minister has
  - (i) received a notice, given under section 163 by either party to the dispute, informing him of the failure of the parties to enter into or revise a collective agreement, or
  - (ii) taken action under subsection 164(2); and
- (d) seven days have elapsed from the date on which the Minister
  - (i) notified the parties of his intention not to appoint a conciliation officer or conciliation commissioner or to establish a conciliation board under subsection 164(1),
  - (ii) notified the parties of his intention not to appoint a conciliation commissioner or to establish a conciliation board under section 166, or
  - (iii) released a copy of the report of a conciliation commissioner or conciliation board to the parties to the dispute pursuant to paragraph 170(a).

(There could also be certain circumstances in which a strike or lock-out would be unlawful for a longer period as a result of a government order pursuant to Section 181 to protect the national interest);

It should be noted that the expiry date of a collective agreement does NOT mark the end of the period during which strike or lock-out is unlawful. Where notice to bargain has been given the benefits under the collective agreement and all other rights and privileges of the employees are protected AFTER the expiry date of the collective agreement and until such time as the requirements outlined above have been met. (See Section 148(b) - page 17).

## **WHEN CAN AN APPLICATION BE MADE?**

As will be seen from the provisions of Sections 182 and 183 which appear further on it is not necessary to wait until a strike or lock-out has actually taken place before filing an application.

If there is good reason to believe that an unlawful strike or lock-out is likely to take place, an application should be filed without delay. An advance phone call to one of the offices of the Board can be helpful in ensuring the availability of staff and facilities to respond promptly to the situation. Because of the priority in these cases the Regional Offices may make arrangements to have an application transmitted to the Board by electronic means.

## **PREPARING THE APPLICATION**

In the case of an alleged unlawful strike, Section 37 of the Regulations and for a lock-out, Section 38 outlines the content and procedures for applications. The provisions are as follows:

- 37.(1)       An application to the Board pursuant to Section 182 of the Code for a declaration that a strike was, is or would be unlawful shall

(a) set out

(i) the full name and address of the applicant,

(ii) the full particulars of the facts and circumstances on which the employer relies in alleging that the strike was, is or would be unlawful,

(iii) the full name and address of any trade union or employee against whom the allegation is made,

(iv) a statement of the nature of any order sought under paragraphs 182(a) to (d) of the Code, and

(v) if a hearing is requested forthwith, the reasons therefore; and

(b) be accompanied by a copy of any collective agreement relevant to the application.

(2) Where an applicant under section 182 of the Code is seeking a hearing forthwith, he shall deliver a copy of his application to the trade union or employees against whom the allegation is made and inform the Board of the time and manner of such delivery.

(3) A trade union or an employee to whom a copy of an application is delivered pursuant to subsection (2) shall be deemed to have received notice that a hearing may be held forthwith.

(4) The Registrar shall notify the applicant and the trade union or employees against whom the allegation is made of the time and place fixed for a hearing.

38.(1) An application to the Board pursuant to section 183 of the code for a declaration that a lockout was, is or would be unlawful shall

(a) set out

(i) the full name and address of the applicant,

(ii) the full name and address of the employer who is alleged to have declared or caused or is about to declare or cause the alleged lock-out of employees,

(iii) full particulars of the facts and circumstances on which the trade union relies in alleging that the lockout was, is or would be unlawful,

(iv) a statement of the nature of any order sought under paragraphs 182(a) to (d) of the Code, and

(v) if a hearing is requested forthwith, the reasons therefor; and

(d) be accompanied by a copy of any collective agreement relevant to the application.

(2) Where an applicant under section 183 of the Code is seeking a hearing forthwith, he shall deliver a copy of his application to the employer against whom the allegation



is made and inform the Board of the time and manner of such delivery.

- (3) An employer to whom a copy of an application is delivered pursuant to subsection (2) shall be deemed to have received notice that a hearing may be held forthwith.
  - (4) The Registrar shall notify the applicant and the employer against whom the allegation is made of the time and place fixed for a hearing.
- 39.(1) Notwithstanding any other provision of these Regulations, the Registrar may send a copy of any application made to the Board under section 182 or 183 of the Code to any person in respect of whom an application is made, and any such person may, within five days of the receipt of the copy of the application from the Registrar or from the applicant, whichever is the earlier, or within such shorter period of time set by the Board, file a reply with the Board.
- (2) A reply filed pursuant to subsection (1) shall contain
    - (a) the full name and address of the persons replying;
    - (b) a clear identification of the application to which the reply relates;
    - (c) an admission or a denial of each of the statements made in the application; and
    - (d) a statement of the grounds and facts relied on in reply to the application.

## **WHAT ARE THE PROCEDURES?**

The Parliament of Canada recognizing the losses suffered by workers, employers and communities in strikes and lock-outs provided for anticipatory applications. The Canada Labour Relations Board for the same reason has established a policy giving priority to these applications.

As soon as an application is received (or advice by telephone) efforts are made to set an early time and place for hearing and an officer is appointed to contact the parties immediately in an effort to assist in the prevention or settlement of the unlawful strike or lock-out.

If an early hearing is desired it is important to serve a copy of the application on the persons alleged to have violated or who may violate the Code. This is considered as notice that a hearing may be held forthwith.

Although it is not always possible the Board has been known to schedule a hearing within 48 hours of receipt of an application.

## **WHAT REMEDIES ARE AVAILABLE?**

When it is not possible to prevent or settle an unlawful strike or lock-out, the application is heard by the Board. The powers of the Board are detailed in the following sections of the Code:

### **Declarations Relating to Strikes and Lockouts**

182.           Where an employer alleges that a trade union has declared or authorized a strike, or that employees have participated, are participating or are likely to participate in

a strike, the effect of which was, is or would be to involved the participation of an employee in a strike in contravention of this Part, the employer may apply to the Board for a declaration that the strike was, is or would be unlawful and the Board may, after affording the trade union or employees an opportunity to be heard on the application, make such a declaration and, if the employer so requests, may make an order

- (a) requiring the trade union to revoke the declaration or authorization to strike and to give notice of such revocation forthwith to the employees to whom it was directed;
- (b) enjoining any employee from participating in the strike;
- (c) requiring any employee who is participating in the strike to perform the duties of his employment; and
- (d) requiring any trade union, of which any employee with respect to whom an order is made under paragraph (b) or (c) is a member, and any officer or representative of that union, forthwith to give notice of any order made under paragraph (b) or (c) to any employee to whom it applies.

183. Where a trade union alleges that an employer has declared or caused or is about to declare or cause a lockout of employees in contravention of this Part, the trade union may apply to the Board for a declaration that the lockout was, is or would be unlawful and the Board may, after affording

the employer an opportunity to be heard on the application, make such a declaration and, if the trade union so requests, may make an order

- (a) enjoining the employer or any person acting on behalf of the employer from declaring or causing the lockout;
- (b) requiring the employer or any person acting on behalf of the employer to discontinue the lockout and to permit any employee of the employer who was affected by the lockout to return to the duties of his employment; and
- (c) requiring the employer forthwith to give notice of any order made against the employer under paragraph (a) or (b) to any employee who was affected, or would likely have been affected, by the lockout.

183.1(1) An order made under section 182 or 183

- (a) shall be in such terms as the Board considers necessary and sufficient to meet the circumstances of the case; and
- (b) subject to subsection (2), shall have effect for such time as is specified in the order.

(2) Where the Board makes an order under section 182 or 183, the Board may, from time to time on application by the employer or trade union that requested the order or any employer, trade union, employee

or other person affected thereby, notice of which application has been given to the parties named in the order, by supplementary order

- (a) continue the order, with or without modification, for such period as is stated in the supplementary order; or
- (b) revoke the order.

## ENFORCEMENT OF BOARD ORDERS

In the event that an order of the Board is not complied with any person or organization affected by the order may request the Board to file a copy of the Order in the Federal Court of Canada.

When the Board files the Order it is enforceable in the same way as an order of the Court and any person failing to comply is subject to the same penalties as if refusing to obey an order of the Court.

Section 123 of the Code provides as follows:

- 123.(1) The Board shall, on the request in writing of any person or organization affected by any order or decision of the Board, file a copy of the order or decision, exclusive of the reasons therefor, in the Federal Court of Canada, unless, in the opinion of the Board,
- (a) there is no indication of failure or likelihood of failure to comply with the order or decision, or
  - (b) there is other good reason why the filing of the order or decision in the Federal Court of Canada would serve no useful purpose.



(2)

Where the Board files a copy of any order or decision in the Federal Court of Canada pursuant to subsection (1), it shall specify in writing to the Court that the copy of the order or decision is filed pursuant to subsection (1) and, where the Board so specifies, the copy of the order or decision shall be accepted for filing by, and registered in, the Court without further application or other proceeding; and when the copy of the order or decision is registered, the order or decision has the same force and effect and, subject to this section and section 28 of the Federal Court Act, all proceedings may be taken thereon by any person or organization affected thereby as if the order or decision were a judgment obtained in the Court.

## FINANCIAL STATEMENTS

All members of trade unions and employers' organizations are entitled to access to financial statements but it is suggested that a written request should be made to the organization concerned before coming to the Board with a complaint. (An oral request could be forgotten or overlooked.)

- 199.1(1) Every trade union and every employers' organization shall, forthwith on the request of any of its members, provide the member free of charge, with a copy of a financial statement of its affairs to the end of the last fiscal year, certified by its president and treasurer or by its president and any other officer responsible for the handling and administration of its funds to be a true copy.
- (2) Any financial statement provided under subsection (1) shall contain information in sufficient detail to disclose accurately the financial condition and operations of the trade union or employers' organization for the fiscal year for which it was prepared.
- (3) The Board, on the complaint of any member of a trade union or employers' organization that it has failed to comply with subsection (1), may make an order requiring the trade union or employers' organization to file with the Board, within the time set out in the order, a statement in such form and with such particulars as the Board may determine.
- (4) The Board may make an order requiring a trade union or employers' organization to

provide a copy of a statement filed under subsection (3) to such members of the trade union or employers' organization as the Board in its discretion directs.

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